

**Hudson Service Corp. and Marina Salazar. Case 2-
CA-26976**

June 22, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS DEVANEY
AND BROWNING

Upon a charge filed by Marina Salazar, an individual, on November 16, 1993, and a first amended charge on December 14, 1993, the General Counsel of the National Labor Relations Board issued a complaint on March 31, 1994, against Hudson Service Corp., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On May 16, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On May 18, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 19, 1994, notified the Respondent's counsel that unless an answer were received by May 3, 1994, a Motion for Summary Judgment would be filed.¹

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a domestic corporation located in New York, New York, was, at all material times, en-

gaged in providing commercial cleaning and maintenance services. Annually, in the course and conduct of its business operations, the Respondent provides services valued in excess of \$50,000 to various enterprises located within the State of New York which, in turn, meet a direct standard of the Board for assertion of jurisdiction. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About January 14 to 29, 1993, a hearing in the matter of *Hudson Services Corp. v. Local 32B-32J, SEIU, AFL-CIO* (the Union), Index No. 21152/91, was conducted before New York State Supreme Court Judge Seymour Schwartz. About March 22 through 29, 1993, National Labor Relations Board Administrative Law Judge Stephen Davis conducted an unfair labor practice hearing involving Citywide Service Corp. and its alter ego, Hudson Service Corp., in Cases 2-CA-25016, 2-CA-25033, 2-CA-25057, 2-CA-25331, 2-CA-25434, and 2-CB-14082. About November 15, 1993, the Respondent reduced the number of hours assigned to Marina Salazar. About December 7, 1993, the Respondent discharged Salazar. The Respondent engaged in this conduct because Salazar testified against the Respondent and in support of the Union at these state court and Board proceedings. The Respondent discharged Salazar also because she filed an unfair labor practice charge with the Board in the instant matter.

CONCLUSION OF LAW

By the acts and conduct described above,² the Respondent has discriminated and is discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has been discriminating against employees for filing charges or giving testimony under the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (4) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1), (3), and (4) by discharging Marina

¹ By letter dated May 10, 1994, counsel for the Respondent advised the Regional Office that the Respondent had terminated business operations and would not be filing an answer to the complaint.

² The General Counsel's motion makes reference to incidents described as *harassment* that are not alleged in the complaint. Accordingly, no finding can be made with regard to these incidents.

Salazar, and Section 8(a)(1) and (3) by reducing her hours, we shall order the Respondent to offer the discriminatee immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, including restoration of her reduced hours, and to make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful reduction in hours or discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Hudson Service Corp., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, reducing the number of hours assigned, or otherwise discriminating against employees because they file charges with the Board or testify at Board proceedings.

(b) Discharging, reducing the number of hours assigned, or otherwise discriminating against employees because they testify at state court proceedings on behalf of Local 32B-32J, SEIU, AFL-CIO or any other labor organization or because of other union activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Marina Salazar immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, including restoration of the hours that had been assigned before the unlawful discrimination against her, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge and reduction in hours and notify the employee in writing that this has been done and that the reduction in hours or discharge will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other

records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail to all employees employed by the Respondent during the period beginning November 15, 1993, and ending when the Respondent terminated its business operations, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge, reduce the number of hours assigned, or otherwise discriminate against employees because they file charges with the National Labor Relations Board or testify at Board proceedings.

WE WILL NOT discharge, reduce the number of hours assigned, or otherwise discriminate against employees because they testify at state court proceedings on behalf of Local 32B-32J, SEIU, AFL-CIO or any other labor organization or because of other union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Marina Salazar immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, including restoration of the hours that had been assigned before the unlawful discrimination against her, and make her whole for any loss of earnings and other benefits suffered as a result of our discrimination against her, with interest.

WE WILL remove from our files any reference to the unlawful discharge or reduction in hours and notify Marina Salazar in writing that this has been done and

that the discharge or reduction in hours will not be used against her in any way.

HUDSON SERVICE CORP.